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as Trustee of SORENSEN RESEARCH AND
DEVELOPMENT TRUST

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of	) Case No. 07-CV-02278-BTM-CAB
SORENSEN RESEARCH AND)
DEVELOPMENT TRUST,	) DECLARATION OF MELODY A.
	) KRAMER IN SUPPORT OF
Plaintiff,	) PLAINTIFF'S MEMORANDUM OF
v.	) POINTS AND AUTHORITIES IN
	) SUPPORT OF MOTION FOR
HELEN OF TROY Texas Corporation;	) EXCEPTION TO STAY TO
OXO International Ltd.; and DOES 1-	) PRESERVE EVIDENCE
100,)
	) Date: October 31, 2008
Defendants.	) Time: 11:00 a.m.
	) Courtroom 15 – 5 th Floor
	) The Hon. Barry T. Moskowitz
)
	) NO ORAL ARGUMENTS UNLESS
	) REQUESTED BY COURT
)
)

1 I, MELODY A. KRAMER, declare:

2 1. I am not a party to the present action. I am over the age of eighteen. I
3 have personal knowledge of the facts contained within the following paragraphs, and
4 could and would competently testify thereto if called as a witness in a court of law.

5 2. At all times relevant herein I have been an attorney for Sorensen
6 Research and Development Trust ("SRDT"), Plaintiff in the above-captioned matter.

7 3. This Declaration is being submitted in conjunction with **PLAINTIFF'S**
8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
9 **MOTION FOR EXCEPTION TO STAY TO PRESERVE EVIDENCE**

10 4. Plaintiff has already requested the relief sought in this motion from
11 Defendants by stipulation, and has provided Defendant with a copy of relevant
12 portions of the August 20, 2008 court transcript and resulting orders in those six
13 related cases in which the Court ordered identical discovery. However, Defendant
14 still refuses to stipulate.

15 5. Pre-litigation, Defendants' counsel advised Plaintiff's counsel that
16 detailed manufacturing information required to respond to Plaintiff's infringement
17 claims had to be obtained "from OXO's suppliers in Asia."

18 6. In a letter dated October 31, 2005, counsel for Defendants
19 acknowledged the difficulty in getting process information from the foreign third
20 party manufacturers. Additionally a number of the Accused Products are near the
21 end of their life cycle, as stated by Defendants' counsel in a letter dated March 16,
22 2006.

23 7. These facts lead Plaintiff to believe that the Accused Products have
24 ceased to be in production or will no longer be in production soon. As a result, the
25 foreign manufacturer is not likely to, and has no obligation to maintain molds, design
26 documents or correspondence. Every day that goes by without the production of this
27 evidence increases the likelihood that the evidence will be lost or destroyed.

1 8. Defendant has not provided Plaintiff with identification of the
2 manufacturers, importers, suppliers, or other non-parties who may have possession,
3 custody, or control of relevant evidence to this case, specifically including prototype
4 and productions molds and technical documents requested in the motion, thus there
5 is no way to ensure preservation of evidence.

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8 RESPECTFULLY SUBMITTED this Thursday, September 11, 2008.

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10 JENS ERIK SORENSEN, as Trustee of
11 SORENSEN RESEARCH AND DEVELOPMENT
12 TRUST, Plaintiff

13 /s/ Melody A. Kramer

14 _____
15 Melody A. Kramer, Esq.
16 Attorney for Plaintiff
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